



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 22 2004

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND U.S. MAIL

Mr. Marcus Belk
P.O. Box 2226
Camden, S.C. 29020

RE: MUR 5444

Dear Mr. Belk:

On April 29 and August 2, 2004, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you on those dates.

Upon further review of the allegations contained in the complaint, the Commission, on December 9, 2004, found that there is reason to believe you, and the National Democratic Congressional Committee and you, as treasurer, knowingly and willfully violated 2 U.S.C. § 441h(b), a provision of the Act. The Commission also found that there is reason to believe the National Democratic Congressional Committee and you, as treasurer, violated 2 U.S.C. §§ 433 and 434, 441a(a)(1)(c), and 432(b)(3). The Factual and Legal Analyses, which formed a basis for the Commission's findings, are attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Subpoena to Produce Documents and Order to Submit Written Answers must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the subpoena and order. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Please note that you have a legal obligation to preserve all documents, records and materials relating to the subject matter of the Factual and Legal Analysis until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter.

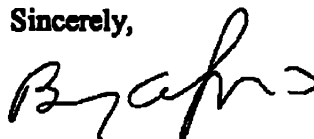
Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Tracey L. Ligon, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith
Chairman

Enclosures

Subpoena and Order

Factual and Legal Analyses

cc: Brian J. Neary, Esquire

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Marcus Belk

MUR: 5444

I. INTRODUCTION

The Democratic Congressional Campaign Committee ("DCCC") filed a complaint in this matter alleging that Marcus Belk fraudulently misrepresented himself as acting on behalf of the DCCC for the purpose of soliciting contributions in violation of 2 U.S.C. § 441h(b). The complaint further alleges that Mr. Belk may have operated a political committee without registering and reporting with the Commission in violation of 2 U.S.C. §§ 433 and 434.

In short, the names of Mr. Belk's committee and the DCCC were similar; the DCCC had a prior history of receiving annual contributions from an entity that diverged from its previous pattern and contributed \$15,000 to Mr. Belk's committee; the contribution check was in an amount (\$15,000) that only a national party committee could accept; and Mr. Belk failed to respond to the complaint's allegation. Available information indicates that Mr. Belk registered multiple committees with the Commission within the last two years, some with names that can be confused with certain national party committees, including one – the National Democratic Congressional Committee ("NDCC") – that has a name that can be easily confused with the DCCC.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

According to the complaint, on or around February 6, 2004, the Ford Motor Company Civic Action Fund issued a \$15,000 check payable to an organization calling itself the "National Democratic Campaign Committee."¹ The complaint states that, on information and belief, the \$15,000 check was intended as a contribution to the DCCC. According to the complaint, the DCCC never received the check; instead, the check was endorsed and deposited by an individual named Marcus Belk. The DCCC attached a copy of the front and back of the check to the complaint. The DCCC states that it is not aware of the circumstances that caused the check to be made payable to the NDCC or to enter Mr. Belk's possession. A review of the Commission's disclosure reports reveals that, with the exception of 2004, the DCCC received contributions from the Ford Motor Company Civic Action Fund every year since 1997.

Based on the apparent intentional similarity in the names of Mr. Belk's organizations and those of the DCCC and other Democratic national party committees, the complainant alleges that Mr. Belk fraudulently misrepresented himself as acting on the DCCC's behalf for the purpose of soliciting contributions in violation of 2 U.S.C. § 441h(b). The complaint further alleges that Mr. Belk may have violated 2 U.S.C. §§ 433 and 434 by receiving the \$15,000 contribution after having terminated the NDCC.

The complaint notes that in June 2003, Mr. Belk filed Statements of Organization with the Commission for four political committees – the NDCC, the National Democratic Senatorial Committee, the National Democratic Political Committee, and Democratic Majority 2004. On October 15, 2003, Mr. Belk filed termination reports with respect to each of these committees,

¹ The check was actually made payable to the "National Democratic Congressional Cmte."

which, according to disclosure reports filed with the Commission, received no contributions and made no disbursements. By letter dated October 31, 2003, the Commission accepted the filings as valid terminations.

The complaint further notes that Mr. Belk was a candidate for the Democratic nomination in New Jersey's Ninth District congressional primary and was also a candidate for the Democratic nomination for the U.S. Senate in South Carolina. Mr. Belk entered both of these races in 2003, running first in New Jersey and then in South Carolina.² Mr. Belk's principal campaign committees for his New Jersey and South Carolina campaigns were Belk 2004 and Belk 2004 U.S. Senate, respectively.³ Notifications of the complaint were sent to Mr. Belk as an individual, and to Mr. Belk as the treasurer of his former political committees. Notifications were also sent to Mr. Belk as the treasurer of Belk 2004, and to Charles Belk as the treasurer of Belk 2004 U.S. Senate. No responses have been received.

B. Analysis

The facts of this matter raise the question of whether Mr. Belk misrepresented himself as acting on behalf of the Democratic Congressional Campaign Committee for the purpose of soliciting contributions in violation of 2 U.S.C. § 441h(b). Section 441h(a) prohibits any person who is a candidate or an employee or agent of such candidate from fraudulently misrepresenting

² According to news reports, during the same time period, Mr. Belk was also the campaign manager for Draft Trafficant for President 2004, which, according to a Statement of Candidacy filed by imprisoned former Congressman Jim Trafficant, was Mr. Trafficant's principal campaign committee. See <http://www.magnoliareport.com/Trafficant.com> (visited June 18, 2004).

³ According to Commission records, on May 20, 2003, Mr. Belk filed a statement of candidacy for the Ninth Congressional district in New Jersey, and on June 11, 2003, filed a Statement of Organization for his campaign committee, Belk 2004. Shortly thereafter, Mr. Belk filed a termination report for Belk 2004 that was accepted by the Commission on July 18, 2003, and dropped out of the race. On August 8, 2003, Mr. Belk filed a statement of candidacy for the Democratic nomination for the U.S. Senate in South Carolina, and filed a Statement of Organization for his campaign committee, Belk 2004 U.S. Senate, on September 15, 2003. Mr. Belk withdrew from the Senate primary contest prior to the election.

himself as speaking, writing, or acting for or on behalf of another candidate or party on a matter that is damaging to that candidate or party. The Bipartisan Campaign Reform Act of 2002 ("BCRA") amended the statute by adding subsection (b), which bans the fraudulent solicitation of funds by any person and prohibits any person from willfully and knowingly participating in, or conspiring to participate in, plans, schemes, or designs to make such fraudulent misrepresentations in soliciting contributions and donations.⁴ See 2 U.S.C. § 441h(b); see also 11 C.F.R. § 110.16.

Subsection (b) was intended to address the Commission's inability under the pre-BCRA statute to pursue enforcement actions against persons and organizations not associated with a candidate who engage in fraudulent solicitation of funds. See Final Rule on Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,969 (Dec. 13, 2002); see also *Federal Election Commission Annual Reports* for 2001 at 39, for 1999 at 47-48, for 1998 at 52, for 1997 at 47 (recommending that Congress amend § 441h to prohibit fraudulent solicitation because contributions that people believed were going for the benefit of the candidate were diverted for other purposes, harming both the candidates and the contributors).

The record currently contains no information regarding any communication between Mr. Belk and the Ford Motor Company Civic Action Fund. However, the fact that Mr. Belk created a political committee with a name – the Democratic National Campaign Committee – that can be easily confused with the Democratic Congressional Campaign Committee, and accepted a

⁴ Section 441h(b)(2) requires that a Respondent "willfully and knowingly" participate in, or conspire to participate in, a plan, scheme or design to engage in fraudulent solicitation. Thus, "knowing and willful" is an element of the statute rather than a separate basis for increased civil and criminal liability under 2 U.S.C. § 437g(d)(1)(C).

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contribution in an amount (\$15,000) that only a national party committee is permitted to accept, *see* 11 C.F.R. § 110.1(c), raises the question of whether Mr. Belk used the NDCC to intentionally deceive persons and cause them to make contributions to the NDCC with the misapprehension that they were contributing to the DCCC.⁵

While the record currently does not contain information regarding an express misrepresentation, the fact that the Ford Motor Company Civic Action Fund had a seven-year history of making annual contributions to the DCCC, and diverged from its prior pattern when it contributed \$15,000 to the NDCC suggests that Mr. Belk may have obtained the Fund's \$15,000 contribution by misrepresenting his committee as the DCCC or affiliated with the DCCC. The fact that the Ford Motor Company Civic Action Fund may have been intentionally misled is further supported by the fact that the Fund contributed an amount that only a national party committee may accept; Mr. Belk's NDCC, as a nonconnected committee, could accept no more than \$5,000 from the Fund in any calendar year. 2 U.S.C. § 441a(a)(1)(C).

Given the available information, an adverse inference may be drawn from Mr. Belk's failure to respond to the complaint. The adverse inference rule provides a tool for courts and agencies to infer that when a party fails to produce relevant information within his or her control, then the information is unfavorable to that party.

Finally, the activities of Mr. Belk may have been intentionally designed to mislead reasonable people and, therefore, may have been knowing and willful. The knowing and willful standard requires knowledge that one is violating the law. *See Federal Election Comm'n v. John A. Dramesi for Congress Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986). Proof that a defendant

⁵ Courts have held that even absent an express misrepresentation, a scheme devised with the intent to defraud is still fraud if it was reasonably calculated to deceive persons of ordinary prudence and comprehension. *See U.S. v. Thomas*, 377 F.3d 232, 242 (2nd Cir. 2004), *citing Silverman v. U.S.*, 213 F.2d 405 (5th Cir. 1954).

acted deliberately and with knowledge that the representation was false may establish a knowing and willful violation, and a jury may infer that a defendant's acts were knowing and willful from the defendant's elaborate scheme to disguise his actions. *See United States v. Hopkins*, 916 F2d 207, 214-15 (5th Cir. 1990).

Here, the fact that Mr. Belk created a political committee with a name that could easily be confused with a national party committee, and accepted a \$15,000 contribution as though the NDCC were a national party committee, suggests a scheme by Mr. Belk to disguise the true identity of his committee. Moreover, Mr. Belk personally endorsed the \$15,000 check, indicating he may have deposited it in a personal account. At this time, Mr. Belk's actions lead to a reasonable inference that he was attempting to defraud prospective donors and engage in fraudulent solicitation. Based on the foregoing, there is reason to believe that Marcus Belk knowing and willfully violated 2 U.S.C. § 441h(b).

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RESPONDENT: National Democratic Congressional Committee and Marcus Belk, as Treasurer MUR: 5444

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candidate from fraudulently misrepresenting himself as speaking, writing, or acting for or on behalf of another candidate or party on a matter that is damaging to that candidate or party. The Bipartisan Campaign Reform Act of 2002 ("BCRA") amended the statute by adding subsection (b), which bans the fraudulent solicitation of funds by any person and prohibits any person from willfully and knowingly participating in, or conspiring to participate in, plans, schemes, or designs to make such fraudulent misrepresentations in soliciting contributions and donations.⁴ See 2 U.S.C. § 441h(b); see also 11 C.F.R. § 110.16.

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Campaign Committee, and accepted a contribution in an amount (\$15,000) that only a national party committee is permitted to accept, *see* 11 C.F.R. § 110.1(c), raises the question of whether Mr. Belk used the NDCC to intentionally deceive persons and cause them to make contributions to the NDCC with the misapprehension that they were contributing to the DCCC.⁵

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Given the available information, an adverse inference may be drawn from Mr. Belk's failure to respond to the complaint. The adverse inference rule provides a tool for courts and agencies to infer that when a party fails to produce relevant information within his or her control, then the information is unfavorable to that party.

Finally, the activities of Mr. Belk may have been intentionally designed to mislead reasonable people and, therefore, may have been knowing and willful. The

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knowing and willful standard requires knowledge that one is violating the law. See *Federal Election Comm'n v. John A. Dramesi for Congress Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986). Proof that a defendant acted deliberately and with knowledge that the representation was false may establish a knowing and willful violation, and a jury may infer that a defendant's acts were knowing and willful from the defendant's elaborate scheme to disguise his actions. See *United States v. Hopkins*, 916 F2d 207, 214-15 (5th Cir. 1990).

Here, the fact that Mr. Belk created a political committee with a name that could easily be confused with a national party committee, and accepted a \$15,000 contribution as though the NDCC were a national party committee, suggests a fraudulent scheme by Mr. Belk to disguise the true identity of his committee. Moreover, Mr. Belk personally endorsed the \$15,000 check, indicating he may have deposited it in a personal account. At this time, Mr. Belk's actions lead to a reasonable inference that he was attempting to defraud prospective donors and engage in fraudulent solicitation. Based on the foregoing, there is reason to believe that the National Democratic Congressional Committee and Marcus Belk, as Treasurer, knowing and willfully violated 2 U.S.C. § 441h(b).

The complaint further alleges that by receiving the \$15,000 contribution after having terminated the NDCC's status as a political committee registered with the Commission, Mr. Belk may have violated 2 U.S.C. §§ 433 and 434 by operating a political committee without registering and reporting. The Act defines a political committee as any committee, club, association, or other group of persons that receives contributions or makes expenditures aggregating in excess of \$1,000 during a calendar

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year. 2 U.S.C. § 431(4)(A). Contributions and expenditures are broadly defined -- these terms include anything of value that is given or received for the purpose of influencing a federal election. See 2 U.S.C. § 431(8)(A), (9)(A). Pursuant to the Act, an organization that qualifies as a political committee must register with the Commission by submitting a statement of organization within ten days of designation and report receipts and disbursements on a periodic basis. See 2 U.S.C. §§ 433, 434.

Here, there is reason to believe the National Democratic Congressional Committee and Marcus Belk, as treasurer, violated 2 U.S.C. §§ 433 and 434 by failing to re-register as a political committee once the Committee received a contribution in excess of \$1,000 and by failing to file disclosure reports with the Commission thereafter.⁶ In addition, there is reason to believe the National Democratic Congressional Committee also violated 2 U.S.C. § 441a(a)(1)(c) by accepting a contribution that was excessive by \$10,000; and violated 2 U.S.C. § 432(b)(3) by potentially commingling the contributed funds with Mr. Belk's personal funds.

⁶ Prior to receiving the \$15,000 contribution on or around February 6, 2004, from the Ford Motor Company Civic Action Fund, Mr. Belk filed a report with the Commission on October 15, 2003, requesting that the NDCC be terminated. By letter dated October 31, 2003, the Commission accepted the filing as a valid termination of the NDCC.